I answer the questions asked:

1. The temple is beneficially entitled to the corpus of the money in question. The priest for the time being is entitled beneficially to the interest earned by the money. He is undoubtedly free to spend the money if he sees fit on the maintenance of the temple structure.
2. The $25,433.32 is to be paid into Court.

The trustees have liberty to apply for the approval of a cypres scheme or for such other order for the better securing of the said sum as an endowment of the Temple as they think fit.

Order accordingly.

Solicitors for the plaintiffs—*Aditan & Co.*

Solicitors for first and second defendants—*Zehnder Brothers.*

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C.J.

October 29, 1937.

REX v. K. MUTHUVELU.

[SINGAPORE MAGISTRATE'S APPEAL No. 78 of 1937]

Telegraphs Ordinance (Cap. 72)—S. 38 sub-s. 1—Forfeiture of apparatus.

Section 38 sub-s. 1 of the Telegraphs Ordinance provides that the person guilty of the offences therein set out shall be liable to fine and imprisonment and also to forfeiture of apparatus.

Held, that the apparatus can only be forfeited if it belongs to the person committing the offence.

MAGISTRATE'S APPEAL.

Pillay for Appellant.

Storr, Crown Counsel, for the Crown.

Cur. Adv. Vult.

TERRELL, AG, C.J.—The accused was charged with working a wireless set without a licence, an offence punishable under section 38(1) of the Telegraphs Ordinance (Chapter 72). He was convicted and fined $50/- or two months' imprisonment and the set was ordered to be confiscated.

Although in some respects the evidence for the prosecution was not sufficiently detailed, I think on the whole that the witness Lillingstone proved that the set was capable of being worked, and there was material from which the learned District Judge could infer that the presumption which arises under section 37 (3) had not been displaced, and that accordingly the accused was proved to have committed the offence.

A difficulty however arises with regard to the forfeiture. Both the accused and the witness Fulkenstein gave evidence that the accused had not purchased the set, but merely had it on trial. Presumably therefore the set belonged to Fulkenstein. The learned District Judge makes no definite finding on this point, but contents himself with saying: "In any event (i.e. even if his evidence is true) Fulkenstein has broken the law." This is very likely to be the case. If however the set belonged to Fulkenstein then the forfeiture clause in section 38(1) hardly seems to be applicable. The section reads:—

> "Any person who.....works any apparatus.....without a licence shall be liable to a fine.....or to imprisonment.....and in either case shall be liable to forfeit any apparatus for wireless telegraphy installed or worked without a licence."

The forfeiture clause is quite different to that found in the Chandu Revenue, Petroleum Revenue and Liquors Revenue Ordinances in all of which the dutiable article in respect of which any offence has been committed may be seized at the discretion of a revenue officer and if seized, shall be forfeited. These Ordinances leave no discretion to the Court.

In the proposed bill to amend the Importation of Textiles (Quotas) Ordinance, it is to be provided in section 11(3): "any regulated textiles in respect of which reasonable suspicion exists that an offence under this Ordinance or any regulation made thereunder has been or is being committed.....may be seized and .....may be forfeited by order of the Court in which any person is convicted of any such offence."

It will be seen that in this proposed amendment as in the Telegraphs Ordinance the Court has a discretion, but in the former, as in the Chandu Revenue, Petroleum Revenue and Liquors Revenue Ordinances, the forfeiture can be directed or results from the commission of an offence in connection with the article forfeited, irrespective of the ownership of such article.

For some reason the forfeiture section in the Telegraphs Ordinance is drawn differently. Instead of providing that in case of any offence the apparatus shall be, or may be, forfeited, it provides that the person guilty of the offence shall be liable to forfeit the apparatus. I think that must mean that the apparatus can only be forfeited if it belongs to the person committing the offence.

Both the accused and Fulkenstein have sworn that the apparatus belonged to the latter, and there is nothing to contradict their evidence. In the result the wireless set can only be forfeited if Fulkenstein is found guilty of an offence, and the forfeiture in the present case must be set aside.

Apart from this the appeal will be dismissed and the sentence confirmed.

Appeal dismissed.

Solicitor for the appellant—*S. G. Pillay.*